(2007) 06 KL CK 0052

High Court Of Kerala

Case No: Cr.M.C. No. 1868 of 2007

Prabhakar Dev		APPELLANT
	Vs	
State of Kerala		RESPONDENT

Date of Decision: June 14, 2007

Acts Referred:

- Constitution of India, 1950 - Article 42, 43
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Kerala Plantations Labour Act, 1951 - Section 2
- Negotiable Instruments Act, 1881 (NI) - Section 138
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3

Citation: (2009) 148 CompCas 600 : (2007) 3 ILR (Ker) 30 : (2007) 2 KLJ 692 : (2008) 1 LLJ 86

Hon'ble Judges: R. Basant, J

Bench: Single Bench

Advocate: A.M. Shaffique, E.K. Nanadakumar, A.K. Jayasankar Nambiar and K. John Mathai, for the Appellant; P.G. Thampy, DPG, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Basant, J.
Does the Plantations Labour Act, 1951 (for short "the Act") contemplate (or rule out) the existence of plurality of employers for a plantation? Does the deemed employer u/s 2(e) oust the real employer from his chair? Does the deemed employer continue to be the sole employer for the purposes of the Act?

2. These are the interesting questions that are raised in these petitions where the Managing Director of the owner - a public limited company as well as a Manager of its

plantation face indictment in various prosecutions under the Act and the Managing Director seeks quashing of proceedings against him.

3. The area of dispute is limited. It is unnecessary to advert to the specific facts in each prosecution. The prosecution relates to various acts of omission and commission in the plantation in contravention of the provisions of1 the Act and the Kerala Plantations Labour Rules, 1959 (for short "the Rules"). The alleged violations include the failure to make vital, essential facilities and requirements - like, drinking water, available to the employees in the plantation.

4. The plantation is owned by the Harrisons Malayalam Plantations, a public Ltd., Company and the 1st accused is admittedly the Managing Director of the Company. The 2nd accused is the Manager appointed for Sentinal Rock Estate by the Company to manage the estate.

5. The definition of the "employer" in Section 2(e) of the Act reads as follows:

(e) "employer" when used in relation to a plantation, means the person who has the, ultimate control over the affairs of the plantation, and where the affairs of any plantation are entrusted to any other person (whether called a managing agent, manager, superintendent or by any other name) such other person shall be deemed to be employer in relation to that plantation.

(emphasis supplied)

6. Who is in ultimate control over the affairs of the plantation? The Company - a fictitious person, is the owner of the plantation and its Director Board is invested with the powers and legal obligation to administer and manage the Company. Among the Directors, the 1st accused has been specified to be the Managing Director and the prosecution alleges that he has ultimate control over the affairs of the plantation. I find that assertion to be totally acceptable. At least, at the threshold, the Managing Director in respect of a public limited company owning a plantation can certainly be reckoned as the person having ultimate control over the affairs of the plantation. His option to prove contra in the course of trial shall of course remain. In these circumstances, there is absolutely no justification in the prayer to invoke the powers u/s 482 of the Cr.P.C. on the first ground that the 1st accused does not have ultimate control over the affairs of the plantation.

7. That is not the crucial question raised. That the 2nd accused is entrusted with the affairs of the plantation is evident and that appears to be the case of the prosecution also. That is why he is arrayed as the 2nd accused in his capacity as the Manager of Harrisons Malayalam Limited, Sentinal Rock Estate.

8. The crucial contention raised is that when such a person is entrusted with the affairs of the plantation, the person in ultimate control over the affairs of the plantation goes out of the net and such person (Manager, Managing Agent, Superintendent or any other officer)

who is entrusted with the affairs of the plantation becomes the sole employer to the exclusion of the Managing Director.

9. The contention calls for closer study of the definition. I have been taken through the Act and the Rules. It cannot, for a moment, be held that the normal rule of interpretation that the singular expressions in a statute embrace the plural also cannot apply in respect of the defined "employer" under the Act. Going by the nature of functions, responsibilities and obligations which the employer has under the Act and Rules, I am unable to agree that the normal canon of interpretation - that the singular would include the plural also, cannot apply in the instant case.

10. We now consider the definition. In simple language, it only says that the person in ultimate control and the person if any entrusted with the affairs of the plantation shall be the employer. It is true that the legislature has used the expression "shall be deemed to be employer" while referring to the person who is entrusted with the affairs of the plantation. The language of the definition does not at all say that the latter excludes the former. Of course, it is not stated that the latter also shall be the employer. Nor is it stated that the latter alone 1 shall be the employer in that event. Going by the plain language of Section 2(e) of the Act, the conclusion appears to be inevitable that the employer is:

(i) the person who has ultimate control over the affairs of the plantation; and

(ii) any other person who has been entrusted with the affairs of the plantation. Section 2(e) of the Act yields to the following break up on analysis:

''Employer'' ''when used in relation to a plantation'' means:

(i) the person who has ultimate control over the affairs of the plantation; and

(ii)(where the affairs of any plantation are. entrusted to any other person) such other person whether called a managing agent, manager, superintendent or any other name who shall be deemed to be the employer.

11. Going by the language, purpose, purport and the object which the provision has to achieve, I find the interpretation canvassed that the Manager/the person entrusted with the affairs would oust and exclude the person in ultimate control of the plantation inadequate'' and unacceptable. Such an interpretation to my mind defeats the purpose which the Statute seeks to achieve. The argument that there can be two categories of plantations viz., (1) where the person in ultimate control himself discharges his responsibilities; and (2) where he entrusts such responsibilities to the other and that different persons are employer in those eventualities does not at all appear to me to be. correct, reasonable or acceptable.

The expressions "the person", "any other person" or "such other person" used in Section 2(e) of the Act cannot at all lead this Court to the conclusion that plurality of employers is

not contemplated by the definition.

12. The Act eloquently conveys the anxiety of the Indian Republic to ameliorate and improve the conditions of the working class. The socialist motivation of the Constitution which in its core is no political ideology and is nothing but the sublime concern for the unfortunate and under privileged, is eloquently declared in Articles 42 and 43 of the Constitution which I extract below:

42. Provision for just and humane conditions of work and maternity relief-The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers.- The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

That constitutional philosophy is attempted to be translated into statutory provisions by the Plantations Labour Act and Rules.

13. I would certainly refuse to assume that the legislature in its attempt to translate the constitutional concern reflected in Articles 42 and 43 chose to prescribe a statutory modality in which the person in ultimate control could conveniently deflect his responsibility and culpable liability to an employee appointed by him by calling him Manager, Managing Agent or Superintendent or by any other name. No legislature which wants to ensure that the investor or entrepreneur must ensure the basic human and humane conveniences for the employees could light heartedly permit the real employer to designate another employee as employer and get away from the culpable consequences for violation of the statutory provisions. The purpose of the Statute would certainly be advanced further by including the former and latter category of employers together under the umbrella of "employer" defined in Section 2(e) of the Act.

14. The contention is raised that various other enactments have provisions which would indicate that another person can be nominated as the employer by the person in ultimate control. Even assuming that to be so; the fact that in respect of plantations the legislature did not want such an arrangement to be made under the Plantation Labour Act and Rules reflects and reveals the contra intention of the legislature.

15. It is contended that the legislature has used the expression "shall be deemed to be employer" to include the latter under the definition of "employer". Reliance is placed on the different shades of meaning of this expression. To my mind, it does not reveal any different intention. Such person entrusted with the affairs is not really the employer. He is also really an employee of the employer stricto sensu - the one in ultimate control. But, for the purpose of convenience and in the interests of better and more efficient enforcement

of the provisions of the Act, the legislature wanted the deeming fiction to be pressed into service. That is why such person who is not really the employer but is only a person entrusted with the affairs is also included in the category of "employer" by a deeming fiction. The fiction employed is only intended to make such person also liable and not, at any rate, to exclude the real employer-the one having ultimate control, from the obligations of the employer. The employment of the fiction, to my mind, was only to rope in the latter category of employers (though actually they would be only employees of the real employer). The fiction in law cannot outlive or overreach its purpose and exclude the real employer from its sweep. The expression; "and" used to connect the two types of employers, who come under the sweep of the definition is, according to me, significant.

16. Reliance is placed on the decision of the Calcutta High Court in Superintendent & Rememberencer of Legal Affairs v. Balai Chand Saha and Ors. (1974) C.W.N. 757. In para-3 of the said decision, after examining similar provisions in other enactments, the following observations is made by the Calcutta High Court:

3. ...An examination of these various provisions with different provisions and difference in language clearly shows that where a person has been made the employer by a deeming provision he excludes persons, who have ultimate control over the affairs of the Plantation, for the purpose of duties and liabilities required to be performed by the employer under the Act or the Rules. In that view of the matter, the opposite parties Nos. 1 to 7 cannot be said to be "employers" under the definition in Section 2(e) as Manager entrusted with the affairs of the company is there.

I am afraid, I cannot agree with this conclusion. My grievance with the said interpretation is that it loses sight of the purpose which is sought to be achieved by the Statute namely insistence on strict adherence to the provisions of the Statute. In the Kerala context of acute unemployment, there will be a beeline of employees willing to get themselves 1 appointed with the respectable designation tag of Manager for a pittance in many smaller plantations. Real employers of such plantation, if I mean, those in ultimate control, cannot get away from the statutory obligations and culpable consequences by dumping all responsibility on their Managers. Permitting passing on of culpable liability by agreement between parties is certainly not the policy of law. Judicial interpretation must also steer clear of such a pit fall. Stronger indications must be given by the legislature which used the expression "and" to connect the former and latter categories of employers and did not use the expression "alone", to clarify that the latter category would exclude the former.

17. Penal statutes must receive a strict construction, it is contended. Strict - yes; but interpretation of any statute must be purposive. Mischief rule applies to interpretation of all statutes - civil, criminal or taxation. These are days when social, commercial and behavioral morality is sought to be ushered in and enforced among the polity by introducing legislations and by making acts punishable. The moral depravity which the ten commandments insisted to make an act objectionable is not insisted by penal statutes of the modern era. Ready examples on hand are the Negotiable Instruments Act (Section

138) and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (Section 3). Interpretation of penal provisions in such statutes ignoring the social and societal purpose, oblivious to the commitment of the Constitution - mother of all laws, is bound to lead Courts astray. Any attempt of interpretation is essentially an endeavour to ascertain the mind of the legislature. The legislature speaks what it means and means, what it speaks, it can safely be assumed. The legislature enacts legislations to achieve harmony in society which is the purpose of all laws. The legislature speaks and is deemed to speak with a sublime commitment to the constitutional goals. Any attempt to resort to the sublime exercise of interpretation - of decoding the legislative intentions, without being conscious of these realities is bound to fail. If the legislature had used the words "alone" or "also" to qualify the deeming exercise probably the task of interpretation may have been simpler. But no such clear indications having been given in the statute, it is up to this Court to look at the definition informed of the purpose, the mischief as also the constitutional perspective.

18. So reckoned, I am certainly of opinion that Section 2(e) of the Act attempts only to bring in one more person - the Manager, Managing Agent, or Superintendent also into the chair of the employer by the deeming fiction and the deemed employer cannot be held to displace the real employer from that chair. The ultimate employer must ensure vicariously and the Manager must personally ensure the actual implementation of the provisions of the Plantations Labour Act strictly in the plantation concerned at the risk of being prosecuted. That appears to be the clear legislative intent.

19. I am, in these circumstances, unable to accept the contention that the prosecution against the common petitioner is not justified and deserves to be quashed.

20. These Crl.M.Cs. are, in these circumstances, dismissed. I may hasten to observe that I have only intended to decide the question of law and hold that there can be plurality of employers for one plantation and that the deemed employer does not oust the real employer. All other questions are left open to be decided in the course of trial.